trial judges revive these obsolete methods in order to procure convictions where there is strong feeling against the accused, they invite a reaction which will cut away even more of what judicial power yet remains. Moreover they invite immediately further extension of administrative action at the expense of the courts. For the elaborate and dilatory process of judicial trial is not needed for man hunts. If law is to be enforced in this fashion, summary administrative action will operate more swiftly, more sensationally, and less expensively.

ENFORCEMENT OF FOREIGN JUDGMENTS. — The courts and text writers have been far from agreement on the nature of a plaintiff's right in a suit to enforce a foreign judgment.[1] This question, as well as that of the principles on which the plaintiff is granted a remedy, is raised in the recent Canadian case of *Bank of Ottawa* v. *Esdale*.[2] In that case an Ontario court gave a judgment for which jurisdiction was lacking. Later the defendant made a general appearance and the court vacated the judgment. Still later the court vacated this order vacating the judgment. An Alberta court gave judgment for the plaintiff in an action on the Ontario judgment.

If the theory is accepted that the plaintiff's original cause of action is merged in the judgment,[3] and that he is suing on a new and separate obligation created by the foreign judgment,[4] it is hard to support the case. For the judgment, when given, was void for want of jurisdiction and would not be recognized abroad;[5] and the order vacating the order to vacate did not purport to do more than to remove the vice from, and thus restore, the original judgment. In other words, although at the time of the last order the court did have jurisdiction, it did not then give a judgment.[6]

And the same objection is met if the theory is accepted that a foreign judgment is given effect as evidence [7] of the original cause of action,[8]

LINA LAWS (1796), c. 452. This is better to be understood when we read of Chief Justice Howard (last Chief Justice of the Colony) that he "was notoriously destitute not only of the common virtues of humanity but of all sympathy whatever for the community in which he lived." JONES, DEFENSE OF THE REVOLUTIONARY HISTORY OF NORTH CAROLINA, 121.

[1] See PIGGOTT ON FOREIGN JUDGMENTS, 2 ed., 4 *ff.*

[2] 1 W. W. 283. For a fuller statement of facts see RECENT CASES, p. 984.

[3] Henderson *v.* Staniford, 105 Mass. 504 (1870). See Suydam *v.* Barber, 18 N. Y. 468, 470 (1858).

[4] See Dunstan *v.* Higgins, 138 N. Y. 70, 33 N. E. 729 (1893); Fisher *v.* Fielding, 67 Conn. 91, 108, 34 Atl. 714, 716 (1895); Baker *v.* Palmer, 83 Ill. 568 (1876); Schibsby *v.* Westenholz, L. R. 6 Q. B. 155 (1870); Godard *v.* Gray, L. R. 6 Q. B. 139 (1870).

[5] Cummington *v.* Belchertown, 149 Mass. 223 (1889).

[6] If the judgment had been appealed from and affirmed, it could be said that the appellate court had given a new judgment incorporating the old, and as the appellate court had jurisdiction its judgment would be recognized abroad. Guiard *v.* De Clermont and Donner, [1914] 3 K. B. 145.

[7] If the judgment is evidence, it is usually spoken of as *prima facie* evidence; for to allow it as conclusive evidence is practically to coincide with the legal obligation theory supported by the cases in note 4, *supra*.

[8] See Tourigny *v.* Houle, 88 Me. 406, 34 Atl. 158 (1896); Grant *v.* Easton, 49 L. T. 645 (1883); Houlditch *v.* Marquess of Donegall, 2 Cl. & Fin. 470 (1834).

the latter not being merged in the judgment.[9] There is no valid judgment to be given as evidence, and the authorities do not suggest that records of proceedings in foreign courts, other than judgments, can be in themselves evidence of indebtedness.[10]

Thus the case must stand or fall with the validity of the Ontario judgment as of the date when rendered. There is considerable authority for the assumption of the Ontario court that a general appearance can confer jurisdiction back, making valid a judgment previously rendered.[11] If this doctrine is sound the Ontario judgment was correctly recognized as valid. But such a fiction has been denied[12] and is open to strong objections.[13] A void judgment is no judgment at all, and it would seem that to say that the defendant's appearance makes it valid is to give such an appearance the force of a judicial decree in that it creates a judgment where there was none before. Nor can the doctrine be supported by analogy to a judgment given *nunc pro tunc*, for the latter is only given when a valid judgment could have been rendered at the earlier date.[14]

By the English view, as announced in one case,[15] the only question in the Alberta court as to this doctrine of a jurisdiction relating back would have been whether it was opposed to natural justice, and not whether it was accepted or refused in Ontario or Alberta. In view of the authorities supporting such a doctrine of relation back[16] it is probable that in the United States it would be held not to violate "due process," and a judg-

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[9] See Hall. *v.* Obder, 11 East, 118 (1809); Bank of Australasia *v.* Harding, 19 L. J. C. P. 345 (1850).

[10] See Foote *v.* Newell, 29 Mo. 400 (1860). But see Colorado *v.* Harbeck, 179 N. Y. Supp. 510 (1919). If a foreign judgment is merely evidence in support of the original cause of action, there seems to be no objection to a rule which would admit records of proceedings other than judgments as evidence, weaker perhaps than a judgment, to the same end. Such records are received for some purposes. See WIGMORE ON EVIDENCE, § 1347. It would then have been possible for the Alberta court to regard the record of all the proceedings in the Ontario Court as sufficient evidence of the plaintiff's claim.

[11] Barnett *v.* Holyoke Mutual Fire Ins. Co., 78 Kan. 630, 97 Pac. 962 (1808); Curtis *v.* Jackson, 23 Minn. 268 (1877); Dreyfus *v.* Moline, 43 Neb. 233, 61 N. W. 599 (1895); Fee *v.* Big Sand Iron Co., 13 Ohio St. 563 (1862); Grantier *v.* Rosecranz, 27 Wis. 488 (1871). See Crane *v.* Penny, 2 Fed. 187 (1880); Tisdale *v.* Rider, 119 App. Div. 594, 104 N. Y. Supp. 77 (1907).

[12] Dallas *v.* Luster, 27 N. D. 450, 147 N. W. 95 (1914); Simensen *v.* Simensen, 13 N. D. 305, 100 N. W. 708 (1904); Bennett *v.* Knights of Maccabees, 40 Wash. 431, 82 Pac. 744 (1905). And Minnesota now holds that where the defendant objects to jurisdiction, such an appearance, even though general because it includes other objections, will not confer jurisdiction back, thus limiting its decision in Curtis *v.* Jackson, note 11, *supra*. Godfrey *v.* Valentine, 39 Minn. 336, 40 N. W. 163 (1888); Spencer *v.* Court of Honor, 120 Minn. 422, 139 N. W. 815 (1913).

[13] The historical explanation of the doctrine may lie in the conception of a judgment as a procedural contract, which can be ratified by the defendant's subsequent appearance. It is enough to say that it is no longer considered that a judgment greatly resembles a contract. See Rae *v.* Hulbert, 17 Ill. 572, 580 (1856); O'Brien *v.* Young, 95 N. Y. 428, 430 (1884). See also 1 BLACK ON JUDGMENTS, 2 ed., § 10.

[14] Womack *v.* Sanford, 37 Ala. 445 (1860). See O'Riordan *v.* Walsh, 8 I. R. C. L. 158 (1873).

[15] Pemberton *v.* Hughes, 1 Ch. 781 (1899). See Vaquelin *v.* Bouard, 15 C. B. (N. S.) 341 (1863).

[16] See note 11, *supra*.

ment depending on it for validity should thus be recognized under the "full faith and credit" clause of the Constitution. But whether the doctrine would conform to the English standard of natural or substantial justice is doubtful,[17] and might be made to depend on the special facts of each case.

IS A PERSON NATURALIZED IN AUSTRALIA A BRITISH SUBJECT IN ENGLAND? — In *The King* v. *Francis, Ex parte Markwald*,[1] a natural-born subject of Germany, who had emigrated in 1878, had settled in Australia, and had become naturalized there in 1908, was held to be an alien in England.[2]

The status of the subject is distinguished from that of the alien by allegiance.[3] A state is composed of certain members or persons known as its nationals.[4] All others are foreigners or aliens.[5] Naturalization is the act of adopting a foreigner and conferring upon him the nationality of a state.[6] Allegiance is bilateral. Hence to have a complete change of nationality three things are essential: (1) the consent of the subject, (2) the consent of the state of which he is a member,[7] and (3) the consent of the state of which he desires to become a member. It is quite possible for a person to cease to be a subject of one state without acquiring another nationality and thus to be without a country.[8] It is also not unusual for a person to acquire a new nationality without ceasing to be a subject of another state and thus to be of double nationality.[9] Whether a national of one state has ceased to be a national of that state depends exclusively upon its law. Whether he has acquired nationality in another state depends exclusively upon the law of that other state. In determining whether an individual is an alien in a particular state the question to be decided is not whether he is still a subject of his former state but whether he has become a subject of the particular state according to its law.[10] Whether a German subject continues to be so depends, therefore,

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[17] The civil law system of issuing execution on a foreign judgment avoids much of the theoretical difficulty that our law encounters by requiring a suit on the judgment. See PIGGOTT ON FOREIGN JUDGMENTS, 2 ed., 22.

[1] [1918] 1 K. B. 617. See RECENT CASES, p. 976, *infra*.

[2] The same result was reached in a subsequent proceeding. Markwald *v.* The Attorney General, 36 T. L. R. 197. See RECENT CASES, p. 976, *infra*. The petitioner was convicted for failing to register as an alien under the Aliens Restriction (Consolidation) Order of 1916, § 19 (1) (*a*). See 1916, 1 STAT. RULES AND ORDERS, 11. The power to issue such an order was conferred upon the Crown by the Alien Restriction Act of 1914, which provided for registration of aliens but left that word undefined. See 4 & 5 GEO. V, c. 12.

[3] The Case of the Marshall of the King's Bench, Y. B. 33 HEN. VI, f. 1, pl. 3 (1455); Calvin's Case, 7 Rep. 1 (1608). See 32 HARV. L. REV. 160.

[4] See 3 MOORE, DIG. INTERNATIONAL LAW, § 372.

[5] See WESTLAKE, INTERNATIONAL LAW, Pt. I, 3, 198.

[6] *Ibid.*, 225; 1 OPPENHEIM, INTERNATIONAL LAW, 2 ed., § 305; VAN DYNE, NATURALIZATION IN THE UNITED STATES, 5.

[7] MacDonald's Case, 18 How. St. Tr. 857 (1746); Rex *v.* Lynch, [1903] 1 K. B. 444.

[8] See 1 OPPENHEIM, INTERNATIONAL LAW, 2 ed., § 311.

[9] *Ibid.*, § 309.

[10] Geshwind *v.* Huntington, [1918] 2 K. B. 420; Dawson *v.* Meuli, 118 L. T. R. 357 (1918); *Ex parte* Freyberger, [1917] 2 K. B. 129; Vecht *v.* Taylor, 33 T. L. R. 317 (1917); Sawyer *v.* Kropp, L. J. 85 K. B. 1446 (1916).